

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

ARTHUR EUGENE FOOR, JR. and  
MARGARET FLORENCE FOOR,

Debtors.

\*  
\* CASE NUMBER 08-40657  
\*  
\*  
\* CHAPTER 13  
\*  
\* HONORABLE KAY WOODS  
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\*\*\*\*\*  
ORDER REGARDING NONCONFORMING AFFIDAVIT  
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This cause is before the Court on Affidavit (Doc. # 50) filed by Olivia Todd, Affiant for National Default Servicing Corporation, authorized outsourcing agent for U.S. Bank, N.A. ("Affiant"), on May 17, 2010. The Affidavit purports to establish a default pursuant to an agreed order providing for conditional relief from stay dated February 26, 2009, ("Agreed Order") (Doc. # 43). The Agreed Order provides that, in the event Debtors Arthur Eugene Foor, Jr. and Margaret Florence Foor failed to make payments as specified in the Agreed Order, U.S. Bank, N.A. ("Creditor") would send a ten-day notice of intent to file an affidavit of default and provide Debtors with a ten-day period to cure such default. If Debtors failed to cure such default within that ten-day period, Creditor was entitled to (i) file an Affidavit setting forth the default, and (ii) upon filing an appropriate Affidavit, an order granting relief from stay without further hearing.

The Agreed Order was based on Motion for Relief from Stay dated January 12, 2009, ("Motion for Relief") (Doc. # 39). The

Motion for Relief established that Creditor was the proper party to obtain relief from stay. The Affidavit must be filed by Creditor or show that Affiant is authorized to file the Affidavit on behalf of Creditor. This Affidavit does not satisfy this requirement because there are no documents attached to indicate that this Affiant is the agent for Creditor.

Based on the Motion for Relief and attachments thereto, the Agreed Order, and the Affidavit, this Court cannot grant relief from stay to Creditor. Accordingly, within twenty-one (21) days of entry of this Order, Affiant is directed to file evidence showing that it is authorized to file the Affidavit on behalf of Creditor. If such evidence is not filed, the Court will strike the Affidavit.

**IT IS SO ORDERED.**



KAY WOODS

UNITED STATES BANKRUPTCY JUDGE